

## Centre for Competition Law and Economics

(A non-profit initiative u/s 8, The Companies Act, 2013)

**To**

The Secretary  
Competition Commission of India  
9th Floor, Office Block – 1  
Kidwai Nagar (East)  
New Delhi - 110023

**30<sup>th</sup> December, 2023**

**Subject: Comments submitted by CCLE on Draft Amendments in CCI (General) Regulations, 2009 regarding Interlocutory Applications (IA)**

Dear **Sir/ Ma'am**,

Please find attached the comments submitted by us on the Draft Amendments in CCI (General) Regulations regarding Interlocutory Applications (IA).

We would be happy to discuss anything on the subject matter and will be looking forward to meeting you in-person.

**Best Regards,**

**Sumit Jain**

**Director**

**Centre for Competition Law and Economics**

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## PRELIMINARY COMMENTS

It is submitted as follows:

1. That the CCI is a '**regulator**' which promotes competition in the market.
2. That unlike an adjudicatory body, the CCI has a statutory mandate to 'advocate' and educate the relevant stakeholders and the citizens at large on the significance of competition in the market<sup>1</sup>.
3. That the regulatory nature of the CCI is pervasive in nature where the appointed members, both from the literal and purposive interpretation of the law, do not necessarily need to have a judicial background. Further, the Commission in a sizable number of orders passed under section 26(2) of the Competition Act do not give the parties a right to hearing. It is made clear that orders under section 26(2), unlike section 26(1), are final in nature. That the CCI is duly empowered to do the same under the statutory scheme, as also held by the Hon'ble SC in CCI vs. SAIL judgement, and this further asserts its regulatory nature<sup>2</sup>.
4. That the role of '**expertise**' in competition law is inherent. That the statutory scheme is cognizant of this aspect<sup>3</sup>.
5. That the role of a competition authority is both legal and economic, in nature. The CCI has its own investigation wing where it ought to conduct an economic analysis of the data, in hand, thereby further underlining its role as a **regulator**.

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<sup>1</sup> Section 49 of the Competition Act, 2002

<sup>2</sup> CIVIL APPEAL NO.7779 OF 2010

<sup>3</sup> Section 9, 17, 36 and 64 of the Competition Act, 2002

## ISSUE-BY-ISSUE COMMENTS

Issue-by-issue submissions are as follows:

### Nature of the CCI as a Regulator

6. The submissions made above are reiterated.

### Sufficiency of the current process

7. That the cause to make such an amendment requires further highlight. That the current procedure as adopted by the CCI while adjudging disputes, wherein the Commission invites the parties to submit their comments/ submissions/ objections in due time, is in line with the objectives of the Act. The Commission has *suo moto* powers to open a case against the contravening entities in the market and the investigation wing is further empowered to add more parties to the matter as the case may be. In such a case, the whole concept of filing IA becomes glare.

### Redundancy of IA

8. The said amendment would result in unnecessary exhaustion of the scarce resources available with the CCI where it may have to allot additional resources to maintain a record of such IAs.

### Funds generated by IA may be recovered by filing fee

9. The revenue generated from the filing of these IAs may be minuscule, however further compensation may be made through a proportional hike in the filing fee made applicable through an amendment.

### Impact on power to pass interim injunction under section 33 of the Act

10. That the concept of filing an IA may be at crossroads with the existing mandate of the CCI. That the Commission is duly empowered to pass an interim injunction under section 33 of the Act. The process of filing IA may be used to stall that process. The hindrance may be bigger where the damage caused by the conduct of the Respondent may be of irreparable nature, more so in the case of volatile markets, affecting the very ability of the Commission to timely course correct the market.

## **Reduction in autonomy**

11. The filing of IA may curtail the much-required autonomy which is given to the CCI through the statute to determine its own procedure. There is a likelihood of wastage of further time where the parties may be making additional pleadings which could have been addressed by the current process, i.e. making comments/ submissions/ objections.
12. The current process followed by the CCI is in line with the ‘Minimum government, maximum governance’ maxim where the regulation is on the basis of principle.

**Table- 1**  
**Comments on IA**

S. No.	Issue identified	Comment
1.	<b>Nature of the CCI</b>	The CCI is a ' <b>regulator</b> ' which promotes and 'advocates' competition in the market. As a dynamic regulator, the Commission may require due autonomy to take timely action to course-correct the market and IA may be a hindrance to that process.
2.	<b>Sufficiency of the current process</b>	The current procedure sufficiency addresses the rights of the parties and balances it with 'economic efficiency'. Thus, the cause of making such an amendment requires further highlights.

3.	<b>Resources generated</b>	Even though the resources generated from the filing of IA may be minuscule, the same may be compensated by making proportionate amendments to the fee required to file an information.
4.	<b>Interim injunction</b>	The concept of IA may infringe upon the mandate of the CCI to pass an interim injunction. The process of filing IA may be used to stall that process wherever there is a possibility of causing irreparable damage to the parties in volatile markets.
5.	<b>Economic process</b>	The Commission is an economic regulator and a proper benefit-cost analysis should be done of any additional regulation keeping in mind the structure of the market.

## OVERALL COMMENTS

It is submitted as follows:

13. That the cause to make such an amendment requires further highlight. The current existing process as followed by the CCI works sufficiently well where adjudication of the disputes and course correction of the market is done in an efficient and timely manner.
14. Since the Commission is an economic **regulator** and not a full adjudicator dealing with civil and criminal matters, any additional regulations should be looked at through the economic lens. We suggest conducting a proper benefit-cost analysis of such additional regulations keeping in mind the structure and volatility of the markets.